AMO REPORTS 82-12

REPORT ON AMENDMENTS TO THE FIRE DEPARTMENTS ACT

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO
JULY 1982

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Association of Municipalities of Ontario, a non-partisan voluntary organization, is united to promote the values of the municipal government system and the status of the municipal level of government as a vital and essential component of the total intergovernmental framework of Ontario and Canada.

The Association acts as the collective voice of Ontario's municipal governments and is organized to accomplish through cooperation and coordination, what the majority have neither the time nor the resources to do individually.

The Association represents some six hundred (600) municipal governments throughout Ontario. The governing body is composed of some eighty (80) municipal elected and appointed officials, who in turn represent a wide-range of municipal government interest.

The following sections and affiliated municipal professional associations form an important part of the Association's structure and therefore, play an important part in its activities in terms of the Board of Directors, program and policy development:

Association Sections:

* County and Regional Section
* Large Urban Section
* Northern Ontario Section (FONOM/NOMA)
* Rural (ROMA) Section
* Organization of Small Urban Municipalities Section

Association Affiliates:

* Association of Municipal Clerks and Treasurers of Ontario
* Association of Municipal Tax Collectors of Ontario
* Municipal Engineers Association
* Ontario Municipal Administrators Association
* Ontario Municipal Personnel Association
* Ontario Municipal Social Services Association
* Society of Directors of Municipal Recreation of Ontario

To the Municipal Clerk:

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PROPOSED AMENDMENTS TO THE FIRE DEPARTMENTS ACT

Introduction

The Association of Municipalities of Ontario has traditionally had a strong commitment to improving legislation affecting municipalities and, particularly, in their role as the provider of police and fire services. As with any legislation, regardless of how well it served its original purposes, review and amendment are necessary to ensure continued effective application. Amendments to the Police Act have been addressed by AMO and discussions with the Ministry of the Solicitor General have now been concluded. We now proceed to focus on amendments necessary to improve the workability of the Fire Departments Act.

The issue of amendments to the Fire Departments Act is one of very long standing. Resolutions calling for amendments have been endorsed by the municipal associations since 1958 and numerous briefs and reports have been submitted, by both the former Municipal Liaison Committee and professional associations, to a succession of Solicitors General without success.

The following are proposed amendments to the Fire Departments Act, which, it is hoped, will be acted upon in the near future.

Section 1

1(a) An amendment should be made to permit a municipality to appoint more than one deputy fire chief. The Fire Departments Act interprets "deputy chief" as the

> "one person who has been appointed by the council of the municipality to act in the place of the chief of the fire department in his absence or in the case of a vacancy in the office"

There is considerable debate regarding this definition and whether it permits a municipality to appoint additional deputy chiefs. Although authority is provided to municipalities in the Municipal Act for

> "appointing such officers and servants as may be necessary for the purposes of the corporation, or for carrying into effect the provisions of any Act of the Legislature or by-law of the council, and for fixing their remuneration and prescribing their duties, and the security to be given for the performance of them",

municipalities have been challenged in their attempts to appoint more than one deputy fire chief. Certainly in large fire departments of several hundred persons, it is essential that there be more than one deputy fire chief. Municipalities will not appoint more than are necessary due to the higher rate of remuneration that deputy fire chiefs receive.

If the intent of the Fire Departments Act is to permit municipalities to appoint additional deputy fire chiefs, clarification is necessary. Related to the appointment of additional deputy fire chiefs is the issue of their exclusion from the bargaining unit. This is discussed further under Section 5(1).

1(d) Section 1(d) of the Act should be changed to redefine the meaning of a "full-time fire fighter". As it stands, the Act defines a full-time fire fighter as:

> "... a person regularly employed in the fire department on a full-time salaried basis and ASSIGNED EXCLUSIVELY to fire protection or fire prevention duties and includes officers and TECHNICIANS."
> (emphasis added for purposes of reference)

An amendment should be made to change the clause "ASSIGNED EXCLUSIVELY to fire protection or fire prevention duties" to "ASSIGNED PRIMARILY to fire protection or fire prevention

duties". The definition, as it is now, limits fire fighters to performing duties which have historically been performed in fighting fires only. Disputes have arisen over duties assigned which may be related to the fire fighting process in some way (i.e. shovelling snow from firehall driveways, mowing the lawns of the firehall premises) but are felt by fire fighters to be too distantly related to "exclusive fire protection or fire prevention duties" for them to perform.

In addition to the first concern in section 1(d), it should also be noted that the term "TECHNICIANS" is ambiguous and, therefore, should either be excluded or, if it is to be left in, should be defined in the Act.

Civilian employees are dealt with in Section 5(1).

Section 2

2(6) An amendment should be made to this subsection which states that:

> "The hours off duty of full-time fire fighters shall be free from fire department duties or calls."

It is essential that the chief or other officer in charge have the authority to call fire fighters regarding a change in working conditions, such as, a change in location. The fact that provision is made in collective agreements for the payment of overtime (time and one-half) indicates that it is widely recognized and accepted that off duty fire fighters are called back. Other call-back provisions are also found in the majority of collective agreements. The fact that municipalities must pay overtime to those fire fighters called back will necessarily limit the overtime that is requested.

2(7) Clarification is needed regarding this subsection which currently states:

> "Notwithstanding this section, where a fire, flood or other disaster occurs that requires the services of every full-time fire fighter, the chief or other officer in charge of the fire department may recall to duty any full-time fire fighter who is not on duty."

An amendment is needed to clarify the term "disaster" particularly in terms of the Ministry's proposed Emergency Plans Act. Disaster should be replaced with "emergency" and reference should be made to the definition of emergency in that proposed legislation (Appendix 1).

An amendment is also required to the following clause that states "Where a fire, flood or other disaster occurs that requires the services of every full-time fire fighter ...". The legislation should state "additional full-time fire fighters ...". The majority of fire departments are organized on a four-platoon basis and it is only occasionally that a situation would arise that would necessitate the calling back of three-quarters of the department. This is particularly true in large fire departments of several hundred fire fighters where only very rarely, if ever, would the full complement be required.

Section 4

This section now provides a discharged fire fighter with two authorities to appeal the dismissal - first, by collective agreement, where one exists, and secondly, by appeal to council in accordance with the Act.

The Act should be amended to provide that where a collective agreement is in effect, the fire fighter must appeal a dismissal through the procedures outlined in the agreement.

Appeal to council should only be permitted to those full-time fire fighters covered by the Act and not included in a collective agreement.

Section 5

At present, the Fire Departments Act makes no provision for the right to manage. Since municipal councils are responsible for the efficient management of municipalities, it is essential that certain rights to manage are clearly established in the Fire Departments Act.

If a municipality, through its fire department, is to assume the responsibility of fire protection and fire prevention, it must in no way be hampered in determining the equipment to be used and the number of people to be employed. The municipality must also be free to determine the training that is appropriate to qualify these persons in the discharge of their responsibility. The rights to manage should include a provision such as is found in Section 18 of the Crown Employees Collective Bargaining Act which states:

> "Every collective agreement shall be deemed to provide that it is the exclusive function of the employer to manage, which function, without limiting the generality of the foregoing, includes the right to determine,
> a) employment, appointment, complement, organization, assignment, discipline, dismissal, suspension, work methods, and procedures, kinds and locations of equipment and classification of positions"

5(new) A new provision is recommended to provide for the appointment of a conciliation officer before arbitration as outlined in Section 16(1) of the Labour Relations Act:

> "Where notice has been given under Section 14 or 53, the Minister, upon the request of either party, shall appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement."

This would be consistent with the following provision of the Police Act:

> "Where notice has been given under subsection 29(1), the Solicitor General, upon the request of either party, may appoint a conciliation officer."

It is essential that provision be made for non-binding intervention prior to binding arbitration.

5(1) The Act presently makes provision for the inclusion in the bargaining unit "all full-time fire fighters other than the chief and the deputy chief of the fire department". No provision is made for the exclusion of additional deputy chiefs from the bargaining unit. It is essential that an amendment be made to exclude supervisory personnel from the same bargaining unit as the rank and file members whom they supervise. Discipline is never easy to impose and the difficulties are greatly multiplied when the management representative, responsible for the maintenance of discipline, is a fellow association member.

It is maintained that there is a need to distinguish management personnel from other employees.

Therefore "senior officers" could be defined as contained in the Labour Relations Act:

> 1 (3) Subject to section 90, for the purposes of this Act, no person shall be deemed an employee,
>
> (b) who, in the opinion of the Board, exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations. (R.S.O. 1970, C. 232, S. 1 (2, 3).

It is felt that this provision has served extremely well for distinguishing management personnel from unionized employees and that there is a requirement for a similar provision in the Fire Departments Act.

Perhaps provision could be made for these supervisory personnel to be permitted to voluntarily form a separate association.

The Act should also be further defined to make it clear that civilian employees should be excluded from the Fire Fighters' Association and are to be subject, instead, to the provisions of the Labour Relations Act.

Finally, it seems appropriate that this subsection (5 (1)) should be reworded to state that both parties, and not simply the municipal council should bargain in good faith. To specify this as a condition of only one of the parties is prejudicial and implies that this party alone must be reminded of the need for diplomacy.

5(4) An amendment should be made to this subsection on affiliated bodies by replacing the words in block letters in the following with the clause immediately following:

> 5 (4) The members of the bargaining committee shall be full-time fire fighters, but, where not less than fifty percent of the full-time fire fighters belong to a trade union, the bargaining committee may, at all meetings held with the council of the municipality OR ANY COMMITTEE THEREOF for the purpose of bargaining, be accompanied by,
>
> (a) where the trade union is affiliated with a provincial body, one member of the provincial body; and
>
> (b) where the trade union is affiliated with an international body, one member of the international body,

each of whom shall attend in a supervisory capacity only. (R.S.O. 1970, C. 169, S. 5C1-4)

Replace with: "OR THEIR DESIGNATED REPRESENTATIVES."

With this, municipalities would be allowed to appoint representatives with knowledge in the field of labour relations rather than being restricted to committees of municipal council. This would counterbalance the advantage fire fighters' bargaining units tend to have with advisors from their provincial and international affiliated body.

Sections 6 and 7

These sections which deal with the process of arbitration, agreements and awards, were the subject of extended study and resulted in a report prepared by AMO in 1980. Although the Minister of Labour has repeatedly been requested to respond to the recommendations contained in the Report and to release the findings of an Interministerial Task Force on this issue for further discussion, no response has been made.

The AMO recommendations on arbitration are as follows:

1. that compulsory conciliation, mediation, or other non-binding intervention be employed before continuing to binding arbitration.

2. that there be a recognition that the public service is one, that collective bargaining is an entity, and that if binding arbitration is to be invoked there should be a single system administered by a single agency and consistent as to procedures, formation, qualifications of the arbitrator, payment of costs and so forth for those services now subject to the process.

3. that arbitration proceedings be guided by a set of criteria established by statute and designed to assure the promotion of the public interest and to avoid the frustration of public policy. These

criteria should be similar to those set forth in the Crown Employees Collective Bargaining Act but extended to include specific reference to public interest, public policy and local economic conditions.

4. that there be a system for accrediting and providing training for arbitrators (either single or chairmen) and that there be a small core of full-time arbitrators with tenure.

5. that a system of automatic review of awards be established so that prior to issuing of the award the arbitrator could reconsider the implications of his award on the public interest and public policy.

6. that there be recognition by the Provincial Government of the linkage between the arbitration process and the funding of public services.

7. that where in the judgment of the arbitrator or chairman the interests of sound collective bargaining relations require a term for an agreement longer than one year, he be empowered to impose a term for the agreement not to exceed a period of twenty-four months and, in any event, not less than twelve months.

In addition to these seven recommendations on arbitration, an eighth one appears necessary.

It is felt that the arbitrator chosen should not be appointed when either party has refused that individual as chairman. Whether the chairman who has been refused can act impartially with the knowledge of which party refused him is only part of the problem. Even more importantly is the feeling among representatives of one party that treatment has not been impartial; a feeling which, if harboured, will not lead to favourable labour relations in general.

Section 10

This section currently states that council must make adequate provision in its estimates for the payment of a request (of a bargaining unit).

This has been interpreted to mean that councils must set aside moneys to cover the full cost of the Association's demand. This, of course, severely curtails the bargaining position of the municipality and places an unnecessary burden upon the taxpayers.

This section should be deleted completely.

New

Finally, it is felt that a new clause should be added to the Act to prohibit fire fighters, one of the most essential groups of municipal employees, from striking at any time, whether or not an agreement is in force. The service provided by fire fighters is too important to be without for even a moment as a whole area may be placed in jeopardy. Thus, a clause based on Section 72 of the Labour Relations Act, with this stringent provision added, would be in order. The proposed clause would be as follows:

> "Where a collective agreement is in operation, under negotiation, or where conciliationg or arbitration is in process, no employee shall strike and no employer shall lock out such an employee."

The terms "lock out" and "strike" are to be defined in the Fire Departments Act as contained in the Labour Relations Act, Section 1 (k) and 1 (o).

Summary

As stated previously, municipalities urgently require these amendments if they are to be effective providers of fire fighting services. It is evident that all labour legislation requires continuous review and updating as can be seen in the extensive review of Bill 100, The School Boards and Teachers Collective Negotiations Act, and in the ongoing amendments being made to the Employment Standards Act and the Ontario Labour Relations Act. The Fire Departments Act should not be an exception to this review process as it is in the best interest of all concerned that efficient and effective fire fighting legislation be in place. If agreement on the necessary amendments is not forthcoming, perhaps the Act should be the subject of a public inquiry.

APPENDIX 1

Excerpt from "DISCUSSION PAPER ON PROPOSED EMERGENCY PLANNING LEGISLATION" - Ministry of the Solicitor General, June, 1981

An Act to provide for the Formulation and Implementation of Emergency Plans

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario enacts as follows:

Interpretation

1. In this Act,

R.S.O. 1970, c. 386

(a) "Crown employee" means a Crown employee within the meaning of The Public Service Act;

(b) "emergency" means a situation caused by the forces of nature, an accident or other wise that constitutes a danger to life or property of major proportions;

(c) "emergency area" means the area in which an emergency exists;

(d) "emergency plan" means a plan governing the provision of necessary services during an emergency and the procedures under which and the manner in which employees of a municipality or Crown employees and other persons will respond to the emergency;

(e) "employee of a municipality" means an employee as defined in paragraph 64 of section 352 of The Municipal Act;

R.S.O. 1970, c. 284

(f) "local board" means a local board as defined in The Municipal Affairs Act;

R.S.O. 1970, c. 118

1979, c.82

(g) "local services board" means a local Services Board established under The Local Services Boards Act, 1979;

(h) "municipality" means a city, town, village and township and includes a district, regional and metropolitan municipality and the County of Oxford.

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